

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JANE B. KENNEDY	:	CIVIL ACTION
	:	
v.	:	
	:	
BOROUGH OF SOUTH COATESVILLE,	:	
et al.	:	NO. 98-CV-6558

MEMORANDUM AND ORDER

J. M. KELLY, J.

MAY 11, 1999

Presently before the Court is Defendants' Motion for Judgment on the Pleadings Pursuant to Rule 12(c) and Plaintiff's response. Defendants argue this suit is barred by claim preclusion, and the Court agrees. Defendants' motion therefore is granted.

I. FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff is the owner of some property located in the Borough of Coatesville. In September 1997 Plaintiff applied for a building permit to renovate that property into a "personal care facility," restaurant, delicatessen, and rooming house. The Borough granted the permit later that month.

Plaintiff applied in late February 1998 for Use and Occupancy authorization of her property as a personal care facility. Plaintiff alleges on March 4, 1998, John Griffy, the zoning code enforcement officer, returned Plaintiff's application and fee. Plaintiff claims Griffy refused to inspect the property, and has never learned why her application was denied.

In March 1998 Plaintiff sued almost the same defendants here, claiming her civil rights were violated through a deprivation of property. The parties conducted discovery, and at some point Plaintiff took Mr. Griffy's deposition. Plaintiff claims that she then learned Mr. Griffy

denied her application because of the Borough Council's instructions to discriminate against disabled persons. Plaintiff attempted to depose two Borough Council members but allege the Council members evaded these depositions. Defendants filed a motion for summary judgment on September 29, 1998,¹ but because Plaintiff had not yet deposed the Council members, she sought the Court's permission to conduct these depositions before she filed her response. Judge Shapiro granted this permission, but Plaintiff never took these depositions and never filed a response to the motions for summary judgment. Judge Shapiro granted Defendants' motion on December 8, 1998.

Plaintiff filed the Complaint in this case a few days later. She now alleges Defendants violated her rights under the Fair Housing Administration Act, 42 U.S.C. § 3601 (1994), based upon the information she discovered at Mr. Griffy's deposition. Defendant, however, moves for judgment on the pleadings, arguing it is entitled to judgment because the doctrine of claim preclusion bars Plaintiff from litigating this claim.

II. DISCUSSION

A. The Rule 12(c) Standard.

A court reviewing a motion for judgment under Rule 12(c) must accept the allegations stated in the complaint as true, and it must resolve all inferences in favor of the plaintiff. Taj Mahal Travel, Inc. v. Delta Airlines, Inc., 164 F.3d 186, 189 (3d Cir. 1998). Only if no relief can be granted under any set of facts that might be proved may a court grant this motion. Id. These strict standards, courts hope, insure the nonmoving party's right to a full and fair decision, almost as if it received a trial. 5A Charles A. Wright & Arthur A. Miller, Federal Practice and

¹One other Defendant filed his motion for summary judgment on October 7, 1998.

Procedure § 1368, at 519 (2d ed. 1990).

B. Defendants' Motion For Judgment Pursuant to Rule 12(c).

Defendants move for judgment on the pleadings, arguing Plaintiff's suit is barred by the doctrine of claim preclusion. This doctrine prohibits reexamination both of issues previously decided and those that might have been, but which the parties did not raise. Swineford v. Snyder County Pa., 15 F.3d 1258, 1266 (3d Cir. 1994); Edmundson v. Borough of Kennett Square, 4 F.3d 186, 189 (3d Cir. 1993). Claim preclusion applies where "there has been (1) a final judgment on the merits in a prior suit involving (2) the same claim and (3) the same parties or their privies." EEOC v. United States Steel Corp., 921 F.2d 489, 493 (3d Cir. 1990). Plaintiff's FHAA claim is precluded under this test.

First, Judge Shapiro's entry of summary judgment was a final judgment on the merits. Relying on a bankruptcy court opinion, Plaintiff claims her filing of a motion for reconsideration may be enough to make Judge Shapiro's grant of summary judgment less than final, but the Court does not find this argument persuasive. "It is well settled that a grant of summary judgment is a final adjudication." Greenberg v. Potomac Health Sys., Inc., 869 F. Supp. 328, 330 (E.D. Pa. 1994). Plaintiff also argues that Judge Shapiro's ruling was not on the merits because she decided the summary judgment motion without the benefit of Plaintiff's response. Plaintiff, however, ignores the standards that control the grant of summary judgment and the inquiry into the record and law a court must undertake before granting summary judgment. Judge Shapiro's decision necessarily was a considered one, not the summary judgment "by default" Plaintiff alleges.

The second and third elements of the claim preclusion test also are fulfilled. Both

Plaintiff and Defendants agree the parties her are substantially the same as in the earlier action. Further, this suit involves the same claim. A plaintiff is required to bring all claims arising out of the same occurrence in a single law suit, Board of Trustees v. Centra, 983 F.2d 495, 504 (3d Cir. 1992), and here Plaintiff previously admitted she potentially had a FHAA claim as a result of the denial of her application: she explicitly raised that possibility the Pretrial Memorandum she filed when before Judge Shapiro, (Pl.'s Pretrial Mem. at fifth unnumbered page). Her manifest awareness of this claim demonstrates at a minimum that Plaintiff could have brought the FHAA claim in the earlier suit, see Swineford, 15 F.3d at 1266, and claim preclusion bars Plaintiff's action. Defendants' motion is granted.

An Order follows.

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CIVIL ACTION

NO. 98-CV-6558

ORDER

AND NOW, this 11th day of May, 1999, upon consideration of Defendants' Motion for Judgment on the Pleadings Pursuant to Rule 12(c) (Document No. 5), and Plaintiff's response thereto, it is hereby **ORDERED**:

1. Defendants' motion is **GRANTED**;
2. Judgment is entered in favor of Defendants the Borough of South Coatesville, John Washington, Verline Jacks, Arthur Phillips, John Baxter, Gabriel Milanese, Worth Taylor, John King, and John Griffy and against Plaintiff Jane Kennedy; and
3. The Clerk of Court is ordered to mark this matter closed.

BY THE COURT:

JAMES McGIRR KELLY, J.